

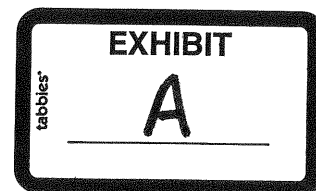


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## Terms of Service

**Effective Date: April 11, 2007**

Welcome to the CafePress.com website, which is located at [cafePress.com](#) (the "Website"). This Terms of Service ("TOS") contain the terms and conditions that govern your use of the Website and the CafePress.com defined below). This TOS describes your rights and responsibilities and what you can expect from the CafePress.com Service. Use of the CafePress.com Website constitutes your acceptance of and agreement to these TOS.

CafePress.com reserves the right to add, delete and/or modify any of the terms and conditions contained in this TOS, at any time and in its sole discretion, by posting a change notice or a new agreement on the CafePress.com Website. In the event of substantive changes to this TOS, you may be notified by email. If any modification is unacceptable to you, your only recourse is to not use the Website and the CafePress.com Service. Your continued use of the CafePress.com Website following posting of a change notice or new TOS on the CafePress.com Website will constitute binding acceptance of the changes.

### 1. The CafePress.com Service.

CafePress.com provides a number of Internet-based services through the Website (all such services collectively, the "CafePress.com Service"). One such service enables users to create and customize products, including without limitation, merchandise, books, compact discs, VCDs, and CD-ROMS (collectively, "Products"). CafePress.com users may create and purchase individual Products for their own use through their own page on the Website ("Shops"). Users who would like to sell Products through the Website must enter into the [Shopkeeper Agreement](#). CafePress.com allows all users to browse through and purchase Products from the Shops. CafePress.com may offer a number of other services on the Website, including without limitation, message boards, contests, and newsletters, which may change from time to time.

### 2. Use of the Web Site and CafePress.com Service.

**2.1 Eligibility.** CafePress.com will only knowingly provide the CafePress.com Service to parties who lawfully enter into and form contracts under applicable law. If you are under the age of 18, but over 13 years of age, you may use the CafePress.com Service only under the supervision of a parent or guardian who agrees to be bound by this TOS. The CafePress.com Service is not intended for use by children under the age of 13.

**2.2 Compliance with TOS and Applicable Law.** You must comply with all of the terms and conditions of this TOS, the applicable agreements and policies referred to below, and all applicable laws, regulations, and rules when you use the CafePress.com Service and the Website.

#### **2.3 Your License to Use the Web Site and the CafePress.com Service.**

(a) CafePress.com solely and exclusively owns all intellectual property and other rights, title, and interest in and to the CafePress.com Service and Website, except as expressly provided in this TOS. For example and without limitation, CafePress.com owns the trademarks CAFE PRESS, CAFE PRESS.COM, CAFE PRESS.COM & Design; CAFESHOPS(SM), CAFESHOPS.COM(SM), YOUR PASSION(SM); the copyrights in and to the Website, and certain technology used in the CafePress.com Service. You will not acquire any right, title or interest therein under

otherwise to any intellectual property owned by CafePress.com.

(b) CafePress.com grants you a limited revocable license to access and use the Website CafePress.com Service for its intended purposes, subject to your compliance with this TOS. This license does not include the right to collect or use information contained on the Website prohibited by CafePress.com; to compete with CafePress.com; to create derivative works from the content of the Website; or download or copy the Website (other than page caching). If you use the Website in a manner that exceeds the scope of this license or you breach this TOS, CafePress.com may revoke the license granted to you.

(c) This Section 2.3 does not pertain to your intellectual property rights. For information regarding your intellectual property rights, please see [Section 4.3](#).

**2.4 Third-Party Services.** CafePress.com may use third parties to provide certain services accessible through the Website. CafePress.com does not control those third parties or their services, and CafePress.com will not be liable to you in any way for your use of such services. These third parties may have their own terms of use and other policies. You must comply with such terms and policies as this TOS when you use those services. If any such terms or policies conflict with CafePress.com's terms, agreements or policies, you must comply with CafePress.com's TOS, agreements or policies, as applicable.

### **3. General Rules.**

**3.1 Prohibited Use.** You may only use the CafePress.com Service as expressly permitted by CafePress.com. You may not cause harm to the Website or the CafePress.com Service. Specifically, but not by way of limitation, you may not: (i) interfere with the CafePress.com Service by using viruses or any other programs or technology designed to disrupt or damage any software or hardware; (ii) modify, create derivative works from, reverse engineer, decompile or disassemble any technology used to provide the CafePress.com Service; (iii) use a robot, spider or other device or process to monitor the activity on the Website, copy pages from the Website, except in the operation or use of an internet "search engine", or use similar technology; (iv) collect electronic mail addresses or other information from third parties using the CafePress.com Service; (v) impersonate another person or entity; (vi) use any meta tags, keywords, terms, key terms, or the like that contain CafePress.com's name or trademarks; (vii) engage in any activity that interferes with another user's ability to use or enjoy the CafePress.com Service; or (viii) encourage any third party in engaging in any activity prohibited by this TOS.

**3.2 Privacy Policy.** By entering into this TOS, you agree to CafePress.com's collection, use and disclosure of your personal information in accordance with the [Privacy Policy](#).

**3.3 Ordering Policies.** If you purchase Products, you agree to do so in accordance with CafePress.com's [Ordering Policy](#) and instructions on the Website. Title to the Products you purchase passes to you when the Products are delivered to the common carrier.

### **4. Create and Buy General Rules and License.**

**4.1 Description.** As part of the CafePress.com Service, CafePress.com offers a service (the "Create & Buy Service") that allows you to upload images, video, audio, data, and other content (collectively, "Content") to the Website to create, produce and purchase Products featuring the uploaded Content for your use.

**4.2 Delivery of Content.** You will upload or deliver to CafePress.com all Content that you want to use with the Create & Buy Service in accordance with the applicable instructions on the Website and the [Usage Policy](#). CafePress.com may, in its sole and exclusive discretion, determine whether any Content complies with such instructions and is satisfactory for use with the Create & Buy Service.

**4.3 Licensing Your Content to CafePress.com.** You will retain ownership of the Content that you upload to the Website. You hereby grant to CafePress.com a royalty-free, worldwide, transferable, nonexclusive license to use such Content, in all media existing now or created in the future, as CafePress.com deems necessary to enable you to use the Create & Buy Service to create, produce and purchase Products. CafePress.com may sublicense the rights that you grant it in this Section to a third party subcreator.

for purposes of providing the CafePress.com Service, processing your order, and producing any of your Products.

## 5. **Reservation of Rights.**

5.1 **Monitoring.** CafePress.com reserves the right, but does not assume the obligation, to monitor transactions and communications that occur through the Website. If CafePress.com determines, in its sole and absolute discretion, that you or another CafePress.com user will breach a term or condition of the Website or that such transaction or communication is inappropriate, CafePress.com may cancel such transaction or take any other action to restrict access to or the availability of any material that may be considered objectionable, without any liability to you or any third party.

5.2 **Modification of the Service.** CafePress.com reserves the right to modify the organization, structure, and "look and feel" of the CafePress.com Service or the Website, and may change, suspend, or discontinue any aspect of the CafePress.com Service at any time without any liability to you or any third party. CafePress.com shall have complete discretion over the features, functions, prices and other terms and conditions on which the CafePress.com Service is offered to CafePress.com users.

## 6. **Submissions.**

When you submit questions, comments, suggestions, ideas, message board postings, material submitted via web forms, contest entries, communications or any other information ("Submissions"), you grant CafePress.com permission to use such Submissions for marketing and other promotional purposes, including the right to sublicense. You agree that CafePress.com will have no obligation to keep your Submissions confidential. You will not bring a claim against CafePress.com based on "moral rights" or other rights arising from CafePress.com's use of a Submission. This Section does not apply to your Content that you use in connection with the Create & Buy Service or Shopkeeper Service.

## 7. **Representations and Warranties.**

7.1 **Mutual Representations and Warranties.** You represent and warrant to CafePress.com and CafePress.com represents and warrants to you: (i) that you or it has the full power and authority to enter into and perform under this TOS, (ii) the execution and performance of your or its obligations under this TOS does not constitute a breach of or conflict with any other agreement or arrangement by which you or it is bound, and (iii) this TOS is a legal, valid and binding obligation of the party entering into this TOS, enforceable in accordance with its terms and conditions.

7.2 **By You.** You represent and warrant to CafePress.com that, in your use of the CafePress.com Service, you: (i) will not infringe the copyright, trademark, patent, trade secret, right of privacy, right of publicity or other legal right of any third party, and (ii) will comply with all applicable laws, rules, and regulations. You further represent and warrant to CafePress.com that: (i) there are no claims, demands or any other proceedings pending, or to the best of your knowledge, threatened with respect to any of your Content, (ii) CafePress.com will not be required to make any payments to any third party in connection with your Content, except for the expenses that CafePress.com incurs in providing the CafePress.com Service, (iii) the use of any instructions, formulae, recommendations, or the like contained in your Content will not cause injury to any third party; and (iv) your Content does not contain viruses or any other malicious code or technology designed to disrupt or damage any software or hardware.

## 8. **Disclaimers and Exclusions.**

**DISCLAIMER OF WARRANTIES.** CAFEPRESS.COM PROVIDES THE WEBSITE AND CAFEPRESS.COM SERVICE ON AN "AS IS" AND "AS AVAILABLE" BASIS. CAFEPRESS.COM DOES NOT REPRESENT OR WARRANT THAT THE WEBSITE, CAFEPRESS.COM SERVICE OR ITS USE: (i) WILL BE UNINTERRUPTED, (ii) WILL BE ACCURATE, (iii) WILL BE FREE OF INACCURACIES OR ERRORS, (iii) WILL MEET YOUR REQUIREMENTS, OR (iv) WILL OPERATE IN CONJUNCTION WITH THE HARDWARE OR SOFTWARE YOU USE. CAFEPRESS.COM MAKES NO WARRANTIES OTHER THAN THOSE MADE EXPRESSLY IN THESE TOS, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT.

**9. Limitation of Liability.**

LIMITATION OF LIABILITY. CAFEPRESS.COM WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING DAMAGES RELATING TO LOST PROFITS, LOST DATA OR LOSS OF GOODWILL) ARISING OUT OF, OR IN CONNECTION WITH THE USE OF THE CAFEPRESS.COM SERVICE OR THIS TOS, BASED ON ANY ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR A BREACH OF PARTY'S REPRESENTATIONS AND WARRANTIES UNDER THIS TOS OR IN CONNECTION WITH ANY INDEMNITY OBLIGATIONS UNDER THIS TOS, IN NO EVENT WILL THE LIABILITY OF EITHER PARTY IN CONNECTION WITH THIS TOS EXCEED THE GREATER OF (i) THE AMOUNT PAID BY CAFEPRESS.COM TO YOU DURING THE SIX MONTHS IMMEDIATELY PRECEDING THE EVENT THAT GIVES RISE TO SUCH LIABILITY OR (ii) \$100.

**10. Indemnification.**

You must indemnify and hold CafePress.com and its employees, representatives, agents, affiliates, directors, officers, managers and shareholders (the "Parties") harmless from any damage, loss (including without limitation, attorneys' fees and costs) incurred in connection with any third-party demand or action ("Claim") brought against any of the Parties alleging that you have breached any provision of this TOS through any act or omission. If you have to indemnify CafePress.com under this Section, CafePress.com will have the right to control the defense, settlement, and resolution of the Claim at your sole expense. You may not settle or otherwise resolve any Claim without CafePress.com's written permission.

**11. Termination.**

11.1 Termination. In its sole discretion, with or without notice to you, CafePress.com may: (i) limit your access to or terminate your use of the Website and/or the CafePress.com Service, (ii) limit your access to or terminate your account, (iii) remove any of your Content from CafePress.com servers and directories and (iv) prohibit you from using the CafePress.com Service and/or the Website.

11.2 Survival. Notwithstanding Section 11.1 above, this TOS will survive indefinitely unless and until CafePress.com chooses to terminate this TOS.

11.3 Effect of Termination. If you or CafePress.com terminates your use of the Website or the CafePress.com Service, CafePress.com may delete any Content or other materials relating to you from the CafePress.com Service on CafePress.com's servers or otherwise in its possession and CafePress.com will have no liability to you or any third party for doing so.

**12. Notice.**

All notices required or permitted to be given under these TOS will be in writing and delivered to the party by any of the following methods: (i) U.S. mail, (ii) overnight courier, or (iii) electronic mail. To give notice to CafePress.com, you must use the following addresses: 950 Tower Lane, Suite 600, San Jose, CA 94404, [TOS@cafepress.com](mailto:TOS@cafepress.com). If CafePress.com provides notice to you, CafePress.com will use the contact information provided by you to CafePress.com. All notices will be deemed received as follows: (i) by delivery by U.S. mail, seven (7) business days after dispatch, (ii) if by overnight courier, when receipt is confirmed by such courier service, or (iii) if by electronic mail, 24 hours after the message is sent, if no "system error" or other notice of non-delivery is generated. If applicable law requires that all communication be "in writing," you agree that email communication will satisfy this requirement.

**13. Dispute Resolution.**

All disputes arising out of, relating to or connected with these TOS or your use of any part of the CafePress.com Service will be exclusively resolved under confidential binding arbitration held in San Francisco County, California, before and in accordance with the Rules of the American Arbitration Association, with the sole arbitrator applying California law (without regard for conflicts of law principles). The arbitration award will be binding and may be entered as a judgment in any court of competent jurisdiction. Any

enforce an arbitrator's award will be brought in a federal or state court located in Santa Clara (California). Each party hereby irrevocably submits to the personal jurisdiction of the Federal and State courts in Santa Clara County. Notwithstanding anything to the contrary in this Section 1: CafePress.com may seek equitable relief, including, without limitation, injunctive relief and specific performance, without the requirement of posting a bond or other security or proving money damages insufficient, from a court of competent jurisdiction.

#### 14. **Miscellaneous.**

These TOS will be binding upon each party hereto and its successors and permitted assigns, and shall be construed in accordance with the laws of the State of California without reference to conflict of law principles. This TOS is not assignable or transferable by you without the prior written consent of CafePress.com. This TOS (including all of the policies and other Agreements described in this TOS and all of which are incorporated herein by this reference) contain the entire understanding of the parties regarding its subject matter, and supersedes all prior and contemporaneous agreements and understanding of the parties regarding its subject matter. No failure or delay by a party in exercising any right, power, or privilege under this TOS will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. You and CafePress.com are independent contractors, and no agency, partnership, joint venture, or employee-employer relationship is intended or created by this TOS. The invalidity or unenforceability of any provision of this TOS will not affect the validity or enforceability of any other provision of this TOS, all of which will remain in full force and effect.

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